

Effective February 4, 2005. Subject to further change after comment period.

1 Rule 62. Stay of proceedings to enforce a judgment.

2 (a) Stay upon entry of judgment. Execution or other proceedings to enforce a judgment may
3 issue immediately upon the entry of the final judgment, unless the court in its discretion and on
4 such conditions for the security of the adverse party as are proper, otherwise directs.

5 (b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for
6 the security of the adverse party as are proper, the court may stay the execution of, or any
7 proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter
8 or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or
9 order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a
10 directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for
11 additional findings made pursuant to Rule 52(b).

12 (c) Injunction pending appeal. When an appeal is taken from an interlocutory order or final
13 judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend,
14 modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as
15 it considers proper for the security of the rights of the adverse party.

16 (d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas bond
17 may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may
18 be given at or after the time of filing the notice of appeal. The stay is effective when the
19 supersedeas bond is approved by the court.

20 (e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United
21 States, the state of Utah, or an officer or agency of either, or by direction of any department of
22 either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other
23 security shall be required from the appellant.

24 (f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of usurping,
25 intruding into or unlawfully holding public office, civil or military, within this state, the
26 execution of the judgment shall not be stayed on an appeal.

27 (g) Power of appellate court not limited. The provisions in this rule do not limit any power of
28 an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify,
29 restore, or grant an injunction, or extraordinary relief or to make any order appropriate to
30 preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment upon multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over sureties to be set forth in undertaking.

(i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond having a surety authorized to transact insurance business under Title 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal bonds shall make and file an affidavit setting forth in reasonable detail the assets and liabilities of the surety.

(i)(2) Upon motion and good cause shown, the court may permit a deposit of money in court or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

(i)(3) The parties may by written stipulation waive the requirement of giving a supersedeas bond under Subdivision (d) or agree to an alternate form of security.

(i)(4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and that the surety's liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

(j) Amount of supersedeas bond.

(j)(1) Except as provided in subsection (j)(2), a court shall set the supersedeas bond in an amount that adequately protects the judgment creditor against loss or damage occasioned by the appeal and assures payment in the event the judgment is affirmed. In setting the amount, the court may consider any relevant factor, including:

(j)(1)(A) the judgment debtor's ability to pay the judgment;

(j)(1)(B) the existence and value of security;

(j)(1)(C) the judgment debtor's opportunity to dissipate assets;

(j)(1)(D) the judgment debtor's likelihood of success on appeal; and

(j)(1)(E) the respective harm to the parties from setting a higher or lower amount.

(j)(2) Notwithstanding subsection (j)(1):

(j)(2)(A) the presumptive amount of a bond for compensatory damages is the amount of the compensatory damages plus costs and attorney fees, as applicable, plus 3 years of interest at the applicable interest rate;

(j)(2)(B) the bond for compensatory damages shall not exceed \$25 million in an action by plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in which compensatory damages are not proved for each plaintiff individually; and

(j)(2)(C) no bond shall be required for punitive damages.

(j)(3) If the court permits a bond that is less than the presumptive amount of compensatory damages, the court may also enter such orders as are necessary to protect the judgment creditor during the appeal.¹

(j)(4) If the court finds that the judgment debtor has violated an order or has otherwise dissipated assets, the court may set the bond under subsection (j)(1) without regard to the limits in subsection (j)(2).

~~(j)~~(k) Objecting to sufficiency or amount of security. Any party whose judgment is stayed or sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties on the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security given to stay the judgment by filing and giving notice of such objection. The party so objecting shall be entitled to a hearing thereon upon five days notice or such shorter time as the court may order. The burden of justifying the sufficiency of the sureties or other security and the amount of the bond or other security, shall be borne by the party seeking the stay, unless the objecting party seeks a bond greater than the presumed limits of this rule. The fact that a supersedeas bond, its

¹ Advisory Committee Note. The judge's objective is to protect both a judgment creditor's interest in collecting a judgment affirmed on appeal and to afford a judgment debtor a reasonable opportunity to prosecute an appeal without unduly and unnecessarily affecting the judgment debtor's operations. Among the options the judge might consider are to:

- (1) require periodic financial reports;
- (2) appoint a receiver or master;
- (3) require the debtor to abstract the judgment to all jurisdictions in which the debtor has significant assets;
- (4) require the debtor's corporate officers to personally acknowledge receiving the judgment and to consent to personal jurisdiction for the purpose of enforcing the judgment;
- (5) limit loans other than in the ordinary course of business;
- (6) limit transfer or disposition of assets other than in the ordinary course of business; and
- (7) limit payment of dividends.

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85 surety or other security is generally permitted under this rule shall not be conclusive as to its
86 sufficiency or amount.

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